

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

CIVIL APPLICATION No. 31 OF 2019

(Arising from the High Court (Bukoba District Registry) in Civil Application No. 14 of 2017 & Civil Appeal No. 15B of 2014 and District Court of Karagwe at Kayanga in Civil Case No. 9 of 2014)

JUSTINIAN NOVAT ----- APPLICANT

Versus

JOAS BYERWAZO ----- RESPONDENT

RULING

25/02/2021 & 09/03/2021

Mtulya, J.:

Mr. Justinian Novat (the Applicant) approached this court praying for extension of time to file an appeal out statutory time to contest decision of the **District Court of Karagwe at Kayanga** (the District Court) in **Civil Case No. 9 of 2014** (the case). The Applicant filed the present Application on 27th July 2019 from the decision of the case delivered on 28th July 2015.

Record shows that the Applicant had filed **Civil Appeal 15B of 2015** (the Appeal) in this court within time without any delay, but was not served as per requirement of the law hence the Appeal was dismissed. To show vigilance in following up his appeal the Applicant

had filed **Civil Application No.14 of 2017** in this court which was also struck out for want of competence hence the present Application.

The Application was scheduled for hearing on 25th February 2021 and the Applicant decided to invite learned counsel Ms. Herieth Barnabas to argue the Application on his behalf whereas the Respondent appeared in person. Being aware of the requirement of the law on sufficient cause in section 14 (1) of the **Law of Limitation Act** [Cap. 89 R.E. 2019] (the Limitation Act), Ms. Herieth registered a lengthy submission to persuade this court to decide in favour of her client. However, perusing the record and submission of Ms. Herieth's sufficient causes are in three (3) levels, namely: first, the Applicant is vigilant in following up an appeal; second, degree of prejudice; and third, service to the Applicant during the proceeding in the suits.

In substantiating Applicant's reasoning, Ms. Herieth submitted that her client was ordered to pay general damages of Tanzanian Shillings Twenty Million (20,000,000/=) from the case that emanated from malicious prosecution dispute which was not initiated by the Applicant. According to Ms. Herieth, the Applicant was dissatisfied with the decision in the case and preferred the Appeal within time, but he was not summoned to appear to state his appeal hence was surprised to

receive a notice of hearing of the **Application for Execution of the Decree** registered **No. 9 of 2014 in the District Court**. However, upon perusal of the record in the Appeal, there was no proof of service to the Applicant hence the Applicant filed *omnibus* application in this court registered **Application No. 14 of 2017** praying for extension of time and re-admission of the Appeal, but was struck out for want of competence. Ms. Herieth submitted further that facts in the present Application show that the Applicant was vigilant in following up his rights in an appeal as per precedent in **CRDB Bank v. Gracious Mwanguya** [2017] TLS Law Report 361 and in any case the Respondent will not be prejudiced as it is the Applicant who was ordered to pay the damages.

The cited Applicant's reasons of delay were protested by the Respondent stating that the Applicant was not vigilant as his Appeal was struck out for non-appearance and therefore showed sloppiness in following up his Appeal in this court. With three (3) filing of suits in this court, the Respondent submitted that the Applicant has been delaying him to enjoy his rights by registering cases in this court. In a brief rejoinder, Ms. Herieth argued that all protests registered by the Respondent is part of the proof depicting that the Applicant is vigilant in making sure that his appeal in this court is heard as part of the constitutional right.

I have perused the record of this Application, submissions registered by the parties and section 14 (1) of the Law of Limitation. The Law of Limitation in section 14 (1) requires reasonable explanations of sufficient causes to be produced to grant leave for an enlargement of time to file an appeal in this court. The words reasonable explanations or sufficient causes have already received interpretation in various precedents of this court and Court of Appeal (see: **Dar Es salaam City Council v. Jayantilal P. Rajan**, Civil Application No. 27 of 1987; **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009).

I understand difficulties involved in determining reasonable explanations. That is why there are no established inventory of reasonable explanations (see: **Dar Es Salaam City Council v. Jayantilal P. Rajani** (supra) and **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010). However, the decision in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd** (supra), states that the term good cause is a relative one and is dependent upon party seeking extension of time to provide the relevant material in order

to move the court to exercise its discretion in his favour. It is fortunate that there is general agreement in our courts that when Applicant for an extension of time has shown vigilance in following up his appeal in this court, extension of time may be granted to file an appeal in this court (see: **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017; **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019; and **CRDB Bank v. Gracious Mwanguya** (supra).

In the present Application the Applicant has shown vigilance in following up his constitutional right of appeal and considering the circumstances of the decision of the District Court in the case, this Application must be granted as hereby do. The Applicant is granted fourteen (14) days leave within which to file an appeal in this court without any further delay. The Respondent shall bear costs of this Application.

It is so ordered.




F.H. Mtulya

Judge

09.03.2021

This Ruling was delivered in chambers under the seal of this court in the presence of the Applicant, Mr. Justinian Novat and in the presence of Respondent, Mr. Joas Byerwazo.




F.H. Mtulya

Judge

09.03.2021